

October 8, 2004

Louisville Metro Air Pollution Control District Board
c/o Art Williams, Director, LMAPCD
850 Barret Avenue
Louisville, Kentucky 40204-1745

Re: Informal Comments on Draft Air Toxics Regulations

Dear APCD Board Members:

DuPont Dow Elastomers L.L.C. – Louisville Plant is a Title V permitted facility and the only chloroprene-using operation in the Louisville Metro area. We appreciate the opportunity to submit informal comments on the draft regulatory package prepared by the District.

We support the community's efforts to address air toxics concerns and thereby improve local air quality. We remain committed to doing our part to achieve local air quality goals. We believe a collaborative, cooperative process involving all affected stakeholders is the proper way to balance the costs and benefits of the many possible ways in which community concerns can be addressed. This approach is necessary to set realistic goals and timetables for improvements, focus requirements on the most critical initial risk problems while minimizing efforts on lower risk issues, and resolve significant issues with the approaches taken in the draft regulations.

The following list describes broad issues that we believe must be addressed prior to finalizing this regulatory package:

1. These draft regulations focus on industrial source emissions only. These emissions contribute a small fraction of overall community risk. The expectation that the draft regulations have established is that they will make a significant impact on community risk. In fact, these regulations may reasonably be expected to have only limited impact on community risk. By exempting or ignoring many areas of risk, the draft regulations would impose unduly harsh requirements on industrial sources. We believe it is critical to avoid solutions that cannot be effective because they do not address the most significant sources of risk.
2. To date, the development of these draft regulations has provided no opportunity for dialogue or input in any respect by the regulated community. We believe that a collaborative approach to developing requirements and standards is necessary to ensure a balanced approach to risk reduction. We believe that the draft regulations

are not balanced. Instead, these regulations focus on a very complex, prescriptive approach that includes many elements that do not contribute to risk reduction. We have two related concerns:

- These draft regulations are so complex that there is not enough time in this informal comment process, or a formal 30-day public comment period, to understand them and respond. These preliminary general comments give an overview of issues of concern with the draft regulations. We will comment in more detail and comprehensively to clarify our additional concerns during the formal comment period.
 - The proposed schedule and deadlines in the draft regulations do not provide adequate time to do the required reporting and modeling, develop compliance strategies, gain LMAPCD approvals, and implement necessary facility changes.
3. These draft regulations embody a risk assessment process that layers conservatism upon conservatism to drive extreme standards that some facilities probably cannot achieve. We believe that this risk assessment process is fundamentally flawed and requires extensive dialogue and collaboration in order to be understandable, reasonable, and accurate. We believe the regulations should:
- Use EPA-accepted methodologies;
 - Exclude arbitrarily selected and inappropriate sources that drive standards to extremes; and
 - Provide for inclusion of health studies and other data as part of the standard-setting process in cases where EPA has not established standards.
4. We believe these draft regulations will produce significant unintended consequences as a result of being developed without stakeholder input. Among our concerns are
- Compliance with these draft regulations will require significant capital improvements and impose significant ongoing compliance costs.
 - Additional proscriptive requirements for process changes or new processes will make it even more difficult to respond to marketplace changes in a timely, predictable manner, and discourage modernization and expansion in Louisville.
 - Together, these costs and requirements will place industry in Louisville at a competitive disadvantage, compared to other locations.
 - Over time, it is likely that industry will migrate from Louisville.
 - It is unlikely that new industry will choose to site new facilities in Louisville.
 - The draft regulations have no provisions for *de minimis* concentrations, emission levels, or reasonable thresholds of chemical use. Consequently, insignificant hazards are treated as stringently as major hazards. In addition, the draft regulations establish requirements that arguably would restrict the use of manufactured items containing listed chemicals, such as light bulbs, high-intensity-discharge (HID) and fluorescent lamps, electronic devices and ordinary, consumer and janitorial products at industrial facilities.

- These regulations do not account for the range of changing business plans that a facility may encounter, such as discontinuance of operations.
5. We believe these draft regulations are unacceptable because they do not reflect certain chemical and toxicological facts. The lists of regulated chemicals include many entries covering all of the compounds in a chemical family. There are many compounds that belong to more than one regulated chemical family. A single example includes the cyanates and thiocyanates of various metals (mercury, nickel, lead, cobalt, etc.). These compounds belong to both the category of cyanide and cyanide compounds on the proposed Category 3 list and to the respective categories defined by the parent metal and its compounds, which are on the Category 1, 1A, or 2 lists. The draft regulations do not provide any guidance on how to handle these multi-category compounds. In addition, the toxicological properties of compounds vary greatly among the members of each chemical family. However, the draft regulations would arbitrarily declare all of the members of a particular family to be equally toxic.

We believe LMAPCD should make a significant course correction to return to the collaborative process for risk reduction embodied by the WJCCTF. We believe this cooperative process will produce draft regulations that address risk issues appropriately, are understandable, and produce a balanced plan for risk reduction.

We reiterate our support of continuous reduction of risks from industrial sources as part of the collaborative process. However, we believe it is unacceptable to adopt extreme requirements focused solely on one risk contributor while ignoring the majority of the contributing sources to overall community risk.

Should you have any questions regarding these comments, please contact Mr. Jonathan Miller of my staff at 569-2532.

Sincerely,

Robert F. Singleton
Unit Manager

cc: Mayor Jerry Abramson
Deputy Mayor Joan Riehm
Cabinet Secretary Bruce Traugher
Greater Louisville, Inc./The Metro Chamber of Commerce
APCD Board members
Metro Council members